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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: SAN FRANCISCO, CA Date: JAN 06 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife and children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated June 11, 2003.

On appeal, counsel asserts that the decision of Citizenship and Immigration Services (CIS) contains material and erroneous misstatements of facts and relies on these erroneous facts in arriving at a decision. *Form I-290B*, dated July 10, 2003.

In support of these assertions, counsel submits a brief, dated August 7, 2003; a supplemental declaration of the applicant's spouse, dated August 7, 2003; a declaration of the applicant's spouse, dated March 20, 2003; copies of identification cards evidencing the immigration status of the applicant's spouse and children; a psychological evaluation of the applicant's spouse; copies of financial documents for the applicant and his spouse; copies of country condition reports for the Philippines and photographs of the applicant and his family. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that on June 1, 1990, the applicant procured admission to the United States by presenting a passport in the name of another individual containing a valid nonimmigrant visa. The applicant married a lawful permanent resident of the United States, remained longer than authorized and obtained employment without authorization from the Immigration and Naturalization Service [now CIS].

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of

> admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Counsel asserts that the decision of the acting district director incorrectly states that the applicant and his spouse married on September 14, 2001 and do not have any children when, in fact, the couple married on June 22, 1990 and have three children. Counsel further contends that the district director incorrectly characterizes the income earned by the applicant's spouse. *Appeal Brief*, dated August 7, 2003. The AAO finds that the acting district director erred in regard to the facts cited by counsel and therefore the decision of the acting district director is erroneous in so far as it relies on incorrect facts.

The AAO notes that counsel's brief likewise appears to misstate facts and/or refer to facts that are not present in the instant application. *Id.* at 4 ("Thus, taking all these factors together,...namely – his prostate condition; old age; difficulty in performing ordinary daily living functions like simple house chores; ...it is clear that Appellant's spouse will suffer extreme hardship...). The AAO disregards these statements by counsel as they do not appear to be supported by the record.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer hardship as a result of relocation to the Philippines in order to remain with the applicant. Counsel asserts that one of the children of the applicant and his spouse suffers from asthma and would be confronted with poor living and medical conditions in the Philippines. *Appeal Brief* at 3. *See also Declaration of Christine A. Atienza*, dated March 20, 2003 ("One of the biggest factors when I migrated to the United States in 1989 was the health of my second child Armand who suffered chronic lung infections when we were living in the Philippines because of the poor air quality and health conditions there.") The applicant's spouse states that her parents and siblings are legal permanent residents of the United States and she relies on them for emotional and moral support. *Declaration of Christine A. Atienza* at 7. The applicant's spouse also fears retaliation against herself and her children as a result of the war in Iraq and asserts that the safety and security of United States citizens residing in the Philippines is tenuous. *Id.* at 5-6.

Counsel fails to establish that the applicant's spouse will suffer extreme hardship if she remains in the United States maintaining her proximity to family members and residence in a stable, secure country. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel asserts that the applicant's spouse suffers emotional and psychological hardship as a result of the applicant's inadmissibility to the United States. *Appeal Brief* at 2. Counsel submits a psychological evaluation for the applicant's spouse indicating that she is experiencing signs and symptoms of anxiety and depression in relation to the applicant's immigration status. *Psychological Evaluation of Christine Atienza*, dated August 27, 2000. The AAO notes that the record fails to establish an ongoing relationship between the applicant's spouse and a mental health professional. The AAO further notes that the submitted psychological evaluation was conducted over four years ago; it was provided in conjunction with a previous waiver application for the applicant and does not contain any additional or updated information. *See Decision of the AAO*, dated May 15, 2001. The record fails to provide the AAO with documentation of the psychological condition of the applicant's spouse over time including whether or not treatment and medication were prescribed to the applicant's spouse. The AAO is unable to render a finding of extreme psychological and emotional hardship to the applicant's spouse based on an isolated evaluation.

Counsel asserts that the inadmissibility of the applicant will cause extreme financial hardship to the applicant's spouse and children if they remain in the United States in the absence of the applicant. The applicant's spouse provides a chart of expenses to evidence this claim. *Declaration of Christine A. Atienza* at 4. The AAO notes that the record fails to establish that all of the listed expenses are mandatory. For instance, the average monthly expenses for the applicant and his spouse include two car payments and the record does not demonstrate that the applicant's spouse will require two cars in the absence of the applicant. The listed expenses are contended to remain exactly the same in the presence and the absence of the applicant without explanation or elaboration and are therefore unpersuasive. The record fails to demonstrate that the living arrangements of the applicant's spouse cannot be altered in order to accommodate a change in income. Further, the record does not establish that the applicant will be unable to provide financial support to his family from a location outside of the United States. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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